IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DOLORES KAMINSKI, on Behalf of Herself and all Similarly Situated Persons, Plaintiffs,	:	CIVIL ACTION
v.	:	
FIRST UNION CORPORATION, as successor- in-interest to CORESTATES, FINANCIAL CORP., Defendant.	:	No. 98-CV-1623
MICHAEL IRETON, ROBERT GEIGER JOSEPH MENTA, JOSEPH TYSON, WILLIAM GROSS, IV AND MARK DEOURVAL, on Behalf of Themselves and All Similarly Situated Persons, Plaintiffs,	:	CIVIL ACTION
v.	:	
FIRST UNION CORPORATION, as successor- in-interest to CORESTATES FINANCIAL CORP., Defendant.	:	No. 98-CV-6318
BARBARA JOHNSON and DENNIS ANDERSON, Plaintiffs,	:	CIVIL ACTION
v.	:	
FIRST UNION CORPORATION, as successor- in-interest to CORESTATES FINANCIAL CORP., Defendant.	:	No. 99-CV-1509
ANTHONY VENTURA, et al., on behalf of Themselves and All Similarly Situated Persons, Plaintiffs,	:	CIVIL ACTION
v.	:	

FIRST UNION CORPORATION, as successor- in-interest to CORESTATES FINANCIAL CORP., Defendant,	:	No. 99-CV-4783
EVETTE ARANGO, et al., Plaintiffs,	:	CIVIL ACTION
v.	:	
FIRST UNION CORPORATION, as successor- in-interest to CORESTATES., FINANCIAL CORP., Defendant.	:	No. 99-CV-6532

MEMORANDUM AND ORDER

J. M. KELLY, J. **AUGUST__, 2000**

Presently before the Court is a Motion to Amend Requests for Admission and two Supplementary Motions filed by the Plaintiffs. The Plaintiffs move to have thirty responses to Requests for Admission amended because the responses were recorded erroneously due to a word-processing error. Additionally, they filed supplementary motions to amend responses requesting that those admissions be amended to reflect that the Plaintiffs did not have sufficient knowledge at the time of the admissions to admit or deny the statements.

I. FACTUAL BACKGROUND

The Plaintiffs filed a class action age discrimination suit charging that the Defendant, CoreStates Financial Corp., which was subsequently acquired by First Union Corporation ("First Union") implemented a company restructuring program in which age was a determinative factor in deciding who would be laid off. Upon termination of their employment, the Plaintiffs signed a release agreement containing language indicating that the signatory gave up all rights to sue First Union "for any reason whatsoever." Def. Mem., at 3. At an unspecified time after the Plaintiffs signed the release, they received a "Q&A" document from the Defendant advising that they could, in fact, sue under the Age Discrimination in Employment Act ("ADEA"), 29 U.S.C. §§ 621-626 (1994). Although it is undisputed that the Plaintiffs filed suit after the statute of limitations had run, the Plaintiffs argue that the failure of First Union to timely notify them of their rights to sue should estop the Defendant from asserting the statute of limitations. The

Request for Admissions specifically asks whether and when the Plaintiffs received the "Q&A" document, in order to determine whether the suit was filed in a timely manner after the Plaintiffs were notified of their ability to file suit.

II. DISCUSSION

A two-part test has been established for determining whether a motion to amend a request for admission should be granted. See Fed. R. Civ. P. 36(b). First, the moving party must prove that the amendment will promote a decision based on the merits. See id. 36(a). Second, the non-moving party must fail to prove that the amendments will prejudice their case in some way. See Maramont Corp. v. Barks & Sons, Inc., No. CIV. A. 97-5371, 1999 WL 55175, at *3 (E.D. Pa. Jan. 13, 1999); Sanchez v. City of Philadelphia, No. CIV. A. 96-2648, 1996 WL 389369, at *2 (E.D. Pa. July 11, 1996); Dunn v. Hercules Inc., No. CIV. A. 93-4175, 1994 WL 194542, at *1 (E.D. Pa. May 12, 1994). For the following reasons, the Plaintiffs' motion is denied in part and granted in part.

A. Requests for Admission erroneously recorded due to a word-processing error.

The Plaintiffs argue first that they should be allowed to amend their requests for admission because they were erroneously recorded due to a word processing error. The responses to the Requests for Admissions must be taken as truth, therefore the correction of an erroneously recorded response will promote a decision based upon the merits, which is preferred. See Sanchez, 1996 WL 389369, at *2. The Plaintiffs state in their Reply Memorandum that the errors were the result of an incorrect word-processing code and not a result of confusion or misunderstanding on their part. Because the recorded answers are the result of a clerical error, amending those erroneous answers would clearly support a decision on the merits. See id.

Furthermore, First Union has failed to show that any amendments of the erroneously recorded answers will prejudice their case. Because the answers only need to be corrected, requests for admissions and depositions will not need to be retaken and therefore will not greatly inconvenience the Defendant. Also, actual prejudice does not exist only because a party's position is weakened by a truthful answer. See Maramont Corp., 1999 WL 55175, at *3.

Accordingly, the Plaintiffs' motion to amend requests for admission recorded in error is granted.

B. Requests for Admission that were not the result of the word processing error.

The Plaintiffs' Motion to Amend the Requests for Admission that were not incorrectly recorded as a result of the word processing error, however, is denied. As noted previously, in order to amend a request for admission, the moving party must show that a decision on the merits will be promoted by amending the admissions. See Fed. R. Civ. P. 36(a). Admissions have a conclusively binding effect unless withdrawn or amended by the court. See Coca-Cola Bottling Co. v. The Coca-Cola Co., 123 F.R.D. 97, 102 (D. Del. 1988). Because the Plaintiff's Admissions were made under the supervision of counsel and are taken as fact and not evidence, a decision on the merits would not be supported by amending the Admissions without further evidence that they were made in error.

Additionally, allowing those Plaintiffs who were confused or could not remember specific details to amend their answers would clearly prejudice First Union's case because those Plaintiffs would be permitted to change the record without providing any proof of a legitimate reason for that change, other than their own contradictory testimony. Even without proof of an error or other legitimate reason for an amendment, those Plaintiffs would be permitted to arbitrarily change their answers to the Requests for Admissions. Also, Defendant would likely have to submit to all of those Plaintiffs an additional set of Requests for Admission and possibly conduct additional depositions, costing Defendants both time and money.

Finally, the Plaintiffs wish to amend their answers to read "Plaintiff is without knowledge sufficient to admit or deny this request for admission." Rule 36(b) states that "an answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless the party states that the party has made reasonable inquiry and that the information known or readily obtainable by the party is insufficient to enable the party to admit or deny." Fed. R. Civ. P. 36(b). This portion of the Rule reflects an affirmative duty on the part of the answering party to thoroughly investigate the requests for admission and reply only after researching the answer as completely as possible. Absent new information or evidence of an error, the

Plaintiffs' requests to amend their admissions indicates that they either breached the duty established under Rule 36(b) or that their amended answers would not reflect the truth. Accordingly, the motion is denied in part as to the admissions of those Plaintiffs whose admissions were not the result of erroneous recording.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DOLORES KAMINSKI, on Behalf of Herself and all Similarly Situated Persons, Plaintiff v. FIRST UNION CORPORATION, as successor- in-interest to CORESTATES, FINANCIAL CORP., Defendant.	:	CIVIL ACTION No. 98-CV-1623
MICHAEL IRETON, ROBERT GEIGER JOSEPH MENTA, JOSEPH TYSON, WILLIAM GROSS, IV AND MARK DEOURVAL, on Behalf of Themselves and All Similarly Situated Persons, Plaintiffs, v. FIRST UNION CORPORATION, as successor- in-interest to CORESTATES FINANCIAL CORP., Defendant.	:	CIVIL ACTION No. 98-CV-6318
BARBARA JOHNSON and DENNIS ANDERSON, Plaintiffs, v. FIRST UNION CORPORATION, as successor- in-interest to CORESTATES FINANCIAL CORP., Defendant.	:	CIVIL ACTION No. 99-CV-1509
ANTHONY VENTURA, et al., on behalf of Themselves and All Similarly Situated Persons, Plaintiffs, v. FIRST UNION CORPORATION, as successor- in-interest to CORESTATES FINANCIAL CORP., Defendant,	:	CIVIL ACTION No. 99-CV-4783
EVETTE ARANGO, et al., Plaintiffs, v. FIRST UNION CORPORATION, as	:	CIVIL ACTION

successor- in-interest to CORESTATES., FINANCIAL CORP., Defendant.	: : :	No. 99-CV-6532

O R D E R

AND NOW, this ____ day of August, 2000 upon consideration of Plaintiffs' Motion to Amend Responses to Requests for Admission Pursuant to Federal Rule 36(b) (Doc. No. 153), the two Supplements thereto (Doc. Nos. 157; 160), the Response by the Defendant and Plaintiffs' Reply thereto it is ORDERED:

(1) The Motion to Amend Requests for Admission is GRANTED in part. All answers to Requests for Admission No. 3 that were erroneously recorded as the result of a word-processing error are ordered withdrawn and each answer shall be changed to "denied" for the following Plaintiffs: John L. Anziano, Priscilla Apostolou, George Benezet, Carol A. Bird, Maynard D. Cressman, Joseph T. Drennan, Elaine M. Ellison, Thomas Fallon, William M. Fish, Dorothy L. Goodwin, Joyce A. Harmes, Walter R. Hayes, Anthony F. Herner, James D. Jeffries, William D. Jordan, Nancy Kirchner, Thomas Maiorano, Elinda Marczi, Joseph Mastropietro, Patricia Matthews, Thomas J. McCusker, Charmaine V. Parker, Leota Presnell, James A. Russell, Brenda L. Simmons, Henry J. Stabler, Lawrence Szymczak, John Veritz, Anna M. Volkman and Francis J. Wallace.

2) The Motions to Amend Requests for Admission is DENIED in part. All answers to Request for Admissions by Plaintiffs Carol Chirik, John Curtain, Vincent Keaty, George Gehlert, Anthony Ventura, Barbara Fluehr, Solomon Green, Bernard Lare, Lee Goren and Gloria Young, shall remain "admitted."

BY THE COURT:

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JAMES McGIRR KELLY